RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party, either within or without the state, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. Unless otherwise ordered by the court, each party to the action may take no more than 5 depositions. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Non-stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 10 days before the time of the taking of the deposition, but the court on an ex parte application and for good cause shown may prescribe a shorter notice.

The notice shall state:

(A) The time and place for taking the deposition and whether a stenographic court reporter will be present to record the deposition;

(B) The name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular category of persons to which the person to be deposed belongs;

(C) The person before whom the deposition will be taken; and

(D) The method by which the deposition will be recorded, which method shall be one of the methods designated in subdivision (b)(4) of this rule.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the state and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) A deposition may be recorded by:

(A) Shorthand writing,

(B) Stenotype machine,

(C) Tape recording with multi-track tape,

(D) Video camera recording, or

(E) Any other method agreed to by the parties or approved by the court.

Any method for recording a deposition shall:

(A) Comply with the requirements of Rule 28;

(B) Assure an accurate and trustworthy recording;

(C) Provide clear identification of the separate speakers;

(D) Permit editing for use at trial in a manner that will allow expeditious removal of objectionable and extraneous material without significant disruption in presentation of the edited testimony to a jury;

(E) Allow prompt preparation of a written transcript of the proceedings if such is ordered by any party or the court; and

(F) Allow prompt copying of any audio or video tape of the proceedings, where an audio or video tape is used, if such is ordered by any party or the court.

Any party may object to the taking of a deposition on the grounds that the recording method is not one of those approved above, or that the recording method will not comply with one or more of the criteria (A) through (F) above. Such an objection shall be served in writing and received by the other parties and the court at least 3 days prior to the scheduled date for the deposition. Where such an objection is served, the deposition shall be deferred until such time as the objection is heard by the court.

In a video deposition, the camera shall focus only on the witness and any exhibits utilized by the witness, unless the parties agree otherwise.

Any other party may record a deposition by any means, provided that the recording does not disrupt or impede the deposition process. The method of recording specified in the notice by the party noticing the deposition shall constitute the only official record of the deposition.

(5) The notice to a party deponent may be accompanied by a request that at the taking of the deposition the party deponent produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of Rule 26(b). The party deponent may, within 5 days after service of the notice, serve upon the party taking the deposition written objection to inspection or copying of any or all of the designated materials. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of any justice or judge of the court in which the action is pending. The party taking the deposition may move at any time before or during the taking of the deposition for an order

under Rule 37(a) with respect to any objection to the request or any part thereof, or any failure to produce or permit inspection as requested.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Maine Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be recorded by the means specified in the notice of taking as provided in subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. The court may order the cost of transcription paid by one or some of, or apportioned among, the parties.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Manner of Making Objections; Duration of Depositions; Motion to Terminate or Limit Examination.

(1) Any Objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3).

(2) No deposition shall exceed 8 hours of testimony, but the court may allow additional time on such terms as justice requires for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, any justice or judge of the court in which the action is pending may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness by the officer for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court

holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. The officer shall notify counsel of record of the witness' action or inaction.

(f) Certification by Officer; Exhibits; Copies.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then promptly deliver or mail it to the party that has served the original notice of a deposition.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if the person producing the materials affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) Where the deposition is recorded electronically and a transcript is not prepared, the certification and materials required in paragraph (1) of this subdivision shall be filed with the tape cassette or other electronically preserved record of the deposition.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney fees.

(h) Depositions for Use in Foreign Jurisdictions.

(1) The deposition of any person may be taken in this state upon oral examination pursuant to the laws of another state or of the United States or of another country for use in proceedings there.

(2) If a party seeking to take a deposition or depositions under this subdivision files with the clerk in the county where any deponent resides or is employed or transacts business in person an application as provided in paragraph (3) of this subdivision,

(i) the clerk shall docket the application as though it were a pending action under these rules and may issue a subpoena or subpoenas as provided in Rule 45, in aid of the taking of the deposition of any person named or described in the application;

(ii) whether or not a subpoena has issued, any deponent or party may apply for and be granted any appropriate relief as provided in subdivision (d) of this rule and in Rules 37(a) and 37(b)(1).

(3) The application required by paragraph (2) of this subdivision shall bear the same title as the action or proceeding in the court where it is pending and shall set forth

(i) The name and location of the court in which the action or proceeding is pending.

(ii) The title and docket or other identifying number of the action or proceeding in the court where pending.

(iii) A brief statement of the nature of the action or proceeding and the provisions of the laws of the jurisdiction where the action or proceeding is pending which authorize the deposition.

(iv) The time and place for taking each deposition.

(v) The name and address of each person to be examined, if known, and if the name is not known a general description sufficient to identify the person or the particular class or group to which the person belongs.

(vi) If a subpoena duces tecum is to be served, a designation of the materials to be produced.

(vii) A statement that timely and adequate notice of the taking has been given to all opposing parties either in the manner required by the laws of the jurisdiction where the action or proceeding is pending or in the manner provided in paragraph (1) of subdivision (b) of this rule.

The application shall be signed by a member of the bar of this state, and the member's signature constitutes a certification by the member that to the best of the member's knowledge, information, and belief all statements and supporting facts contained therein are true. The sanctions provided by Rule 11 are applicable to the certification.

Advisory Note
January 1, 2003

The amendment to M.R. Civ. P. 30(b)(1)(A) requires a party to state in the notice whether a court reporter will be present to record the deposition. The intention of the amendment is to give an opposing party sufficient time to procure a court reporter if the recording method is to be one of the other methods permitted by the rule.

Advisory Committee's Notes

May 1, 1999

There are two significant amendments to Rule 30, one limiting the number and length of depositions and the other proscribing certain unfair tactics. Rule 30(a) now provides that each party may take no more than five depositions. The purpose of this amendment and the other new limitations in the discovery rules is to limit the amount of discovery a party may undertake as a matter of right. If a party proposes to take more than five depositions, court approval must be obtained by request under Rule 26(g). Just as the amendment does not limit the court authority to allow more than five depositions, the court also has the authority to limit the number of depositions to less than five in appropriate cases, such as where multiple parties represent a single interest. Thus, a case brought by a tort claimant for injury and by the claimant's spouse for loss of consortium may well be a candidate for the court deciding on motion that both parties represent a single interest for the purposes of the discovery limitations. The total length of a single deposition is also limited to eight hours under Rule 30(d)(2). Again, the court may alter the limitation "as justice requires" on application under Rule 26(g).

A second amendment to Rule 30 is made by a new subdivision (d)(1), taken from its federal counterpart. The amendment proscribes "speaking objections" at depositions that either burden the record with argument of counsel or suggest responses to the witness. The new subdivision also permits an instruction to a deponent not to answer a question only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court or to present a motion concerning the issue. Lawyers frequently complain that opposing counsel instruct witnesses not to answer questions on the grounds of relevance or other improper bases. The intent of the rule is to eliminate this practice by providing that the only proper occasion for an instruction not to answer is one in which the giving of the answer would make the invocation of a privilege or a limitation imposed by the court an empty exercise. Applications to the court under Rule 30(d)(1) should be made under Rule 26(g).

An amendment to the redesignated subdivision (d)(3) has no substantive affect. The language "during the taking of the deposition" has simply been changed to "during a deposition."

Advisory Committee's Notes
1989

Rule 30(b)(7) is added to provide that a deposition may be taken by telephone upon stipulation or order of the court. The amendment embodies the first sentence of Federal Rule 30(b)(7) added by amendment in 1980.

Advisory Committee's Notes
1987

The purpose of these amendments is to broaden the current rules relating to recording of depositions to accommodate technologies, particularly electronic recording and video recording which have developed or been perfected since the rule was last significantly revised in 1970. Additionally, the rules amendments avoid concern that the present rules may unduly restrict competition in this area. Further, it is hoped that the amended rules may present some opportunities for cost savings in discovery.

The amendments have the following features:

1. The notice time for depositions in paragraph (b)(l) is extended to 10 days to provide more realistic times for notice and to provide opportunities for objection where appropriate. Counsel should make all appropriate efforts to contact other parties and arrange mutually convenient deposition times rather than simply sending notices and expecting other parties to comply.

2. The second sentence of paragraph (b)(1) is amended to restructure the sentence into subparagraphs A, B, C and D. However, subparagraphs A and B essentially are the same as the present rule. Subparagraph C is consistent with present practice where the deposition officer is regularly identified. Subparagraph D requires that the notice of the deposition specify the manner in which the deposition will be taken. It is the intent of this provision that the parties, in addition to designating who will take the deposition, indicate the recording method that will be used in taking the deposition. This may allow parties properly to prepare for the deposition, and it also will allow for any objections to the method of deposition taking to be filed in accordance with amendments to paragraph (b)(4) below.

3. Paragraph (b)(4) is completely rewritten. The principal effect of the amendment is to provide four alternative methods of recording depositions

which do not need prior approval by court order. These are shorthand writing, which is still used by a few court reporters; the stenotype machine, which is presently the principal method for recording depositions; tape recording by multi-track tape, which is the method of recording testimony presently used in District Court and is also utilized in some deposition recording proceedings; and video camera recording.

Multi-track tape considerably eases the task of identifying separate speakers on a tape. It should be evident that single-track tape recorders, such as the standard cassette recorders with single microphones, would not meet this criterion and would not be viewed as adequate for deposition recording.

Video camera recording also considerably simplifies identification of the speaker, because the focus is on the witness, who is the principal speaker, and the questioners can identify themselves separately. Further, questioner identification can be aided by proper operator records. Frequently video camera recording of depositions is supplemented by stenotype machine recording. However, if alternative adequate means are provided to separately identify speakers, stenotype machine supplement of video camera recording would not be needed in all cases. In video depositions, occasionally disputes have developed regarding proper focus of the camera. For that reason, the rule includes a provision that, unless the parties agree otherwise, the camera should focus only on the testifying witness and exhibits being utilized by that witness.

In addition to the listed methods, any other method may be used which is agreed to by the parties or approved by the court. This qualification recognizes that there may be other developments and alternative systems which may be appropriate; it also recognizes, as presently under Rule 29, that the parties can do virtually anything in discovery procedure by agreement.

The rule also establishes criteria which any deposition recording method must meet. The purpose is to permit greater flexibility in deposition taking methods by only setting criteria, rather than dictating the technology which must be used in taking the deposition. Generally, deposition recording methods which meet these criteria will be approved even where not listed specifically above. The criteria basically:

(A) Recognize the provisions of Rule 28, particularly the requirement that the deposition officer have no conflict of interest or relationship to the

parties, Rule 28(c), and that the deposition taker be a notary or other officer authorized to administer oaths, Rule 28(a).

(B) Incorporate the present requirement of paragraph (b)(4) that the deposition method assure an accurate and trustworthy recording.

(C) Assure that whatever deposition method is used, persons reviewing the deposition, either on the tape or in a typed transcript, will be able to identify separate speakers with relative ease.

(D) Require that any deposition method used be susceptible to editing in such a manner that the deposition can be either read back or played back at trial after any objectionable and/or extraneous materials have been removed from the deposition. Further, subsection (D) necessarily requires that this editing process operate without great cost or difficulty.

(E) and (F) Require that the deposition taker be able to prepare a written transcript relatively promptly on request of any party and, in addition, that the deposition taker can make available either a recorded tape or a video tape of any deposition where tape recording or video tape is used. This may allow counsel to obtain a taped copy, if desired, at considerably less cost than preparing a full transcript would involve.

The rules also establish a procedure for making objections to deposition methods. The procedures would require that any objection be received in writing by both the court and other parties to the deposition at least three business days before the deposition is scheduled. This would allow sufficient time to either reschedule or rearrange the deposition if a prompt court hearing on the objection to the deposition could not be scheduled. The issues at the court hearing would be whether the recording methods were those approved by this rule, and whether the recording methods to be utilized meet the criteria set in the rule. The procedure authorizes automatic extension of the time for deposition until the objection is ruled on by the court. The rule drafters recognize that there is the potential in this rule for improper use of frivolous objections to obstruct or delay depositions. At the same time, some objection procedure appears to be necessary until experience is gained with alternative technologies. Where the court finds objections to be frivolous or asserted for the purpose of delay, the court could impose appropriate sanctions under Rule 11 or Rule 37.

The amended rule also indicates that any party may record a deposition by any means as long as it does not obstruct the deposition. This amendment in part recognizes the current practice under Rule 30(b)(4) which authorizes stenographic recording even if an alternative means of taking the deposition is used. In addition, it recognizes current problems which have developed where some persons, often indigent or pro se litigants, have brought tape recorders to depositions, seeking to have a means of preserving their testimony without undertaking the cost of purchase of a transcript. Such recording would be allowed under the rules provided that it in no way obstructed the deposition. However, the result of any recording would not be an official transcript of the proceedings and could not be used to compete in any way with the official transcript should the official transcript be used in court.

Rule 30(c) is amended for consistency with the simultaneous amendment of Rule 30(b)(4).

Rule 30(e) is amended to make clear that it is the responsibility of the officer before whom a deposition has been taken to present the transcribed deposition to the witness for signature and that the officer must then notify counsel whether or not the witness has signed the deposition. The changes will allow counsel to request the officer to sign and file the transcript in timely fashion so that, at trial, issues as to whether the deposition transcript has been properly handled so as to be usable in court may be minimized.

The catch-line of Rule 30(f) has been amended to eliminate a reference to filing by the officer, for consistency with the 1985 amendments eliminating the requirement of filing.

Rule 30(f)(3) has been added, consistent with the amendments of Rule 30(b), to allow the filing of a certification and evidence used at the deposition along with a cassette or other electronically preserved record of the deposition without the necessity for filing a transcript.

Advisory Committee's Notes
1985

Rule 30(f)(1) is amended simultaneously with the addition of Rule 26(f) to provide that the officer taking a deposition shall transmit it to the party that served the notice of taking, rather than to the clerk of court. The amendment is applicable in the District Court by virtue of its incorporation in M.D.C.Civ.R. 30. The

requirement of the rule that the deposition be sealed has been eliminated since it is no longer necessary to insure the integrity of the original.

Advisory Committee's Note
February 2, 1976

Rule 30(c) is amended by changing "of Rule 43(b)" in the first sentence to read "of the Maine Rules of Evidence." Rule 43(b), which is being abrogated, deals with the use of leading questions, the calling, interrogation, impeachment and scope of cross-examination of adverse parties, officers, etc. These topics are dealt with in many places in the Evidence Rules. Moreover, many pertinent topics included in the Evidence Rules, such as privilege, are not mentioned in Rule 43(b). A reference to the Evidence Rules generally is therefore made in this subdivision.

Advisory Committee's Note
April 15, 1975

This amendment adds a new Rule 30(h), providing a simplified procedure for taking depositions upon oral examination within Maine to be used in proceedings in another jurisdiction. The former procedure for such depositions contained in Rule 28(d) has been abrogated by a simultaneous amendment. At the same time, a new Rule 31(d) has been added, making the new provision applicable to depositions upon written questions. See Advisory Committee's Notes to amendments of Rules 28 and 31. The amendments will be applicable in the District Court, because Civil Rules 28, 30 and 31 are incorporated in the comparable District Court rules.

Rule 30(h) (1), based on former Rule 28(d), asserts the general proposition that oral depositions may be taken within Maine pursuant to the laws of another jurisdiction. This provision means that most aspects of the deposition, including such matters as the scope and manner of examination and the method of recording, signing, and attesting, will be covered by foreign law. The rule serves only to make available to the foreign party the compulsory process of the Maine courts and to provide necessary protection for the deponent and other parties against abuse of that process. *See* [1] Field, McKusick, and Wroth, *Maine Civil Practice* § 28.5 (2d ed. 1970).

Rule 30(h) (2) provides that upon the filing of the application specified in paragraph (3) of the subdivision, subpoenas to deponents may issue as of course and the protective and compulsive features of the rules come into play. See Form

16 and Advisory Committee's Note thereto. The amendment simplifies the practice under former Rule 28(d), which required a court order entered upon petition for the issuance of subpoenas. Experience under that rule has shown the requirement of an order to be a pure formality. Proceedings were invariably ex parte and the court had no realistic basis for evaluating the petition. The new rule expressly places the burden for seeking relief from an improperly granted subpoena where it has always been in practice B upon the objecting deponent or party, who must move for relief under Rule 30(d). The effect is to place the proceeding on a parity with an action brought in Maine. The application serves the function of the notice of taking under Rule 45(d) (1). As under former Rule 28(d), the application is still to be filed in the county of residence or other personal contact of a deponent. The application is to be docketed by the clerk so that it will be readily accessible to the deponent or the parties.

In a further simplification of the practice, only one such application need be filed even where depositions are sought from deponents in more than one county. As in a Maine action, the clerk in the county where the application is filed may issue subpoenas to be served in other counties. Rule 45 (d) (2), incorporated by reference, protects the deponent from harassment by limiting the distance which he may be required to travel. Although incorporation of Rule 45 (d) (1) would seem to permit the use of subpoena *duces tecum*, neither that device nor production under Rule 30 (b) (5) should be allowed unless such production in conjunction with a deposition is permitted by the law of the jurisdiction where the action is pending.

Under new Rule 30(h) (2) (ii), the filing of the application gives the party seeking the deposition the right to compel answers under Rule 37(a) and seek a contempt sanction under Rule 37(b) (1). The deponent or any opposing party may also proceed under Rule 30(d) for an order terminating the examination or limiting it in one of the ways provided in Rule 26(c). To some extent the Maine court will be restricted in its actions under this provision by the law of the jurisdiction where the action is pending. Thus, if a court of that jurisdiction has issued a protective order under its own discovery rules, the Maine court should adhere to it. In shaping relief under Rule 26(c), the Maine court should be guided by any applicable provisions of the law of the other jurisdiction covering matters such as alternate discovery procedures or scope of examination, and it may be advisable in some instances simply to order suspension of the examination pending a ruling from the court where the action is pending. Of course, where the procedure being followed offends basic standards of fairness or would invade an interest protected under Maine law, such as the work product of a Maine lawyer or the evidentiary

privilege of a Maine citizen, the Court should not hesitate to grant appropriate relief. *See* [1] Field, McKusick, and Wroth, *Maine Civil Practice* § 28.5.

Rule 30(h) (2) (ii) applies even if a subpoena has not been issued, so long as an application has been filed. Thus, as in a Maine action where notice of the deposition has been given to the parties, the parties may proceed without service of a subpoena and still have the advantages of the compulsive and protective provisions of the rules. Of course, the party seeking the deposition may elect to ignore the rule, relying entirely on the power of the foreign court over parties and witnesses within its jurisdiction to compel attendance and answers. In such case, the remedy of the deponent or an opposing party in the event of abuse would ordinarily be sought in the foreign court, although in an unusual instance involving irreparable harm of great magnitude a Maine court might grant injunctive relief in a separate proceeding. A Maine witness over whom the foreign court has no present or potential jurisdiction has the further recourse of declining to comply with a discovery request that is not backed up by the subpoena or order of a Maine court issued upon application under this rule. *Cf.* [1] Field, McKusick, and Wroth, *Maine Civil Practice* § 28.3 at n. 3.

Rule 30(h) (3) describes the contents of the application, which for convenience of reference should be entitled as it is in the court where the action is pending. The application is not served on the deponent but remains on file and accessible to him like the pleadings in an action brought in Maine. The actual subpoena (Official Form 16) should include a reference to the application and the clerk's office where it is filed. An accurate statement of the title of the court and action, including docket number, is required by subparagraphs (i) and (ii) both for completeness of the record in Maine and to enable the deponent to obtain copies of the pleadings if necessary. The term "proceeding" is used to make clear that the rule is not limited to civil actions but may be used to obtain depositions for use in probate, administrative, or criminal proceedings if the law of the other jurisdiction so provides. The statement of the action required by subparagraph (iii) should indicate briefly the factual basis of the plaintiff's claim or other matter. Pertinent discovery provisions of the law of the other jurisdiction should at least be summarized and a proper citation given.

Rule 30(h) (3) (iv), (v), and (vi) are taken from the requirements for notice of deposition in Rule 30(b) (1). They are intended to provide the same foundation for the issuance of a subpoena under Rule 45(d) (1) that service and filing of the notice provides in a Maine action. Subparagraph (v) does not refer expressly to the provisions for corporate depositions contained in Rule 30(b) (6). If the jurisdiction

where the action is pending permits such a procedure, the appropriate designation should be included as the description of the deponent. Subparagraph (vii) makes clear that timely and adequate notice must be given to all opposing parties. Maine has an interest in assuring to all parties the opportunity to raise objections such as privilege even if the other jurisdiction does not so provide. If the law of that jurisdiction does not provide a form of notice the same as or equivalent to that provided by Rule 30(b) (1), the party seeking the deposition must give notice as provided in that rule. The last two sentences of Rule 30(h) (3), in language similar to that of Rule 30(b) (2), are intended to provide the Maine court with a guarantee against frivolous or abusive use of its process. Even if the party seeking the deposition is appearing pro se in the other jurisdiction, he must retain Maine counsel for purposes of this rule. Otherwise there would be no person against whom any necessary sanctions could be applied.

Advisory Committee's Note
September 23, 1971

This amendment clarifies the procedure for examination of a non-party corporation or other organization. Subdivision (b) (6) permits a party to name a corporation or other organization (rather than a natural person) as a deponent in the notice of examination, which must also designate the matters about which discovery is desired. The corporation or other organization is then obliged to designate natural persons authorized to testify on its behalf. In the case of a non-party organization, it is necessary to serve a subpoena rather than merely a notice of examination in order to compel attendance at the taking of the deposition. *See* [1] Field, McKusick & Wroth, *Maine Civil Practice* § 45.5. The amendment makes clear that the subpoena may be used in this situation. When served with a subpoena naming it as the deponent and indicating the matters about which discovery is desired, the non-party organization must respond by designating natural persons who are then obliged to testify as to matters known or reasonably available to the organization. To insure that a non-party organization that is not represented by counsel has knowledge of its duty to designate, the amendment directs the party seeking discovery to advise of the duty in the body of the subpoena. This amendment is taken directly from the amendment to F.R. 30(b) (6) which became effective July 1, 1971.

Advisory Committee's Note
October 1, 1970

Rule 30 reflects some rearrangement of the discovery rules to consolidate in that rule the provisions relating to the procedure for taking oral depositions. The amendment reflects no changes in substance. Rule 30(a), substantially similar to existing Rule 26(a), makes several changes in the existing requirement of leave of court for the taking of a deposition by the plaintiff soon after service upon the defendant. First, leave is required by reference to the time the deposition is to be taken rather than the date of serving the notice of taking. Second, the twenty-day period is extended to thirty days. Third, leave is not required beyond the time that the defendant initiates discovery, thus showing that he has retained counsel. Fourth, leave of court is not required if the plaintiff's attorney, subject to the sanctions of Rule 11, in the notice for the taking of a deposition states, and sets forth facts to support the statement, that the deponent is about to leave the state and will be unavailable for examination unless his deposition is taken before the expiration of the thirty-day period.

Rule 30(b) (1) preserves the requirement of the Maine Rule that, in absence of a court order changing the length of notice, a notice of at least seven days shall be given for the taking of an oral deposition. The difference is thus maintained between the Maine Rule and the Federal Rule, which requires merely "reasonable notice." Rule 30(b) (1) also requires that if a subpoena duces tecum is to be served upon the deponent, the notice shall include a designation of the materials to be produced pursuant to subpoena; thus each party is able to prepare for the deposition more effectively.

Rule 30(b) (4) permits the use of less expensive methods of recording the deposition than the customary stenographic means, but requires that a court order be obtained therefor in order to assure accuracy and trustworthiness, unless the parties stipulate under Rule 29 for such modification of the standard procedures.

Rule 30(b) (5) spells out a simple procedure for the production and inspection of documents or things in connection with the taking of the deposition of a party witness. The procedure is similar to that under Rule 34 for requests for the production or inspection of documents or things, except that the time within which to subject to the request is shortened from thirty days to five days because of the necessities of the deposition situation. If the party deponent objects to the request for production and inspection, as, for example, on the ground of privilege or on the ground that the requested matter does not come within the scope of Rule 26(b) or on the ground of impossibility of compliance by the time of the taking of the deposition the party taking the deposition must take the initiative in seeking an order of court under Rule 37(a) compelling discovery. The procedure of Rule

30(b) (5) is comparable to that spelled out by Rule 45(d) for use when a subpoena duces tecum is served against a deponent. However, only the contempt powers of the court are available to enforce a subpoena duces tecum, which is usable only against a person who can be served within the state, and thus the subpoena duces tecum will customarily be used only against non-party deponents as to whom it is the only avail-able device. On the other hand, the full range of sanctions listed in Rule 37(b) (2) are available against a party deponent, thus making the procedure available against a party deponent under Rule 30(b) (5) both simpler and more effective.

The simple procedure of Rule 30(b) (5) specified for production in connection with a party deposition eliminates the problems that have previously existed as to the interrelation of existing Rules 30, 34 and 45, which problems were discussed in 1 Field, McKusick and Wroth 486-87. Maine Rule 30(b) (5) differs from the federal rule in that it spells out independently of Rule 34 the procedure for production in connection with depositions. F.R. 30(b) (5) simply states: "The procedure of Rule 34 shall apply to the request." This intended application is ambiguous because Rule 34 gives 30 days within which to respond whereas a deposition can be taken on notice of a relatively few days, i. e., 7 days under Maine Rule 30(b) (1) and "reasonable" time under F.R. 30(b) (1).

Rule 30(b) (6) adds a new procedure on depositions which should be advantageous to both sides. A party may name a corporation, partnership, association or governmental agency as the deponent and designate the matters on which he requests examination; then the organization is required to designate the person or persons who shall appear and testify on its behalf.

Rule 30(c) has only minor changes. The first sentence is transferred from existing Rule 26(c). The present Rule provides that the testimony will be transcribed unless all parties waive transcription. The new Rule provides for transcription only upon the request of one of the parties. The fact of the request is relevant to the exercise of the court's discretion in determining who shall pay or share in paying for transcription. Confidentiality of the questions to be asked by a party who elects to serve written questions rather than participate personally in an oral deposition is preserved, by providing that such party may serve the written questions in a sealed envelope upon the party taking the deposition who shall then transmit them in the sealed envelope to the officer.

Rule 30(d) does not make any changes in regard to motions to terminate or limit examination except to add a cross-reference to Rule 37(a) (4) in regard to the award of expenses incurred in relation to the motion.

The provision in Rule 30(e) relating to the refusal of a witness to sign his deposition is tightened through insertion of a thirty-day time period.

The second paragraph added to Rule 30(f) (1) spells out the procedure for handling exhibits related to the deposition.

Explanation of Amendments
December 1, 1959

The last sentence of Rule 30(d) was added, for consistency with the next to the last sentence of Rule 30(b), to permit a single justice of the Supreme Judicial Court to limit or terminate examination during the taking of a deposition in an action pending before him.

Reporter's Notes
December 1, 1959

This rule is based on Federal Rule 30, but with some changes. Subdivisions (b) and (d) are important checks against abuse of the liberal discovery procedures. There is a similar check with respect to Rules 31, 33 and 34, which incorporate these provisions by reference. Subdivision (b) applies before the taking of the deposition begins. Subdivision (d) offers protection while it is being taken; at this point an improper purpose may be more easily detected or demonstrated.

The reference in Rule 30(b) to "undue" expense and the last sentence of the subdivision are not in the federal rule and are inserted to emphasize that the rule should be administered in a way to afford adequate protection to parties and witnesses, particularly in cases involving small sums. The provision for charging the party taking the deposition with the travelling expenses of his opponent in appropriate cases is similarly not included in the federal rule, although it reflects the federal decisions. The language is taken from the New Mexico rule, as is also the provision that a party may be compelled to bring into the state a witness under his control for the purpose of having his deposition taken.

The provision in Rule 30(c) that the court may order the cost of transcription to be paid by one or some of, or apportioned among, the parties is not in the federal

rule. It is taken from an unadopted recommendation of the Federal Advisory Committee made in 1955. It is designed to aid the court in policing the fairness of the use of the deposition machinery. For instance, a party wishing to take a brief deposition on a single vital issue might appropriately seek relief from paying the full cost of transcribing a lengthy examination by his opponent. Furthermore, when the party who took the deposition does not care to have it transcribed and the adverse party wants it, this rule would permit an order requiring the adverse party to bear the cost of transcription. There has been a conflict in the federal decisions as to the propriety of such an order under the present federal rule.

The attendance of a witness may be compelled by subpoena, but no subpoena is necessary to take the deposition of an adverse party. A notice of the taking, given to the attorney as provided by Rule 5(b), is sufficient. A party is not guilty of contempt for non-appearance unless he has been served with a subpoena, but the sanctions of Rule 37 may be invoked against him. Thus an adverse party in Houlton, San Francisco or Moscow can be notified to appear in Portland on a given date for a deposition. His attorney may seek a protective order under Rule 30(b), but he cannot simply ignore the notice without risking dismissal or default under Rule 37(b).

Rule 30(e) deals with the mechanics of submitting the deposition to the witness for his examination, correction and signature. *Cf.* R.S.1954, Chap. 117, Sec. 13 (repealed in 1959). In practice these requirements are often waived.

Rule 30(f) is similar to R.S.1954, Chap. 117, Secs. 15 and 16 (repealed in 1959). It differs slightly from Federal Rule 30(f), following in this respect a 1959 amendment to the Minnesota rules. The change is merely for clarity.